

CONTENT BANKING

1. What it is + definition

In general, money laundering is the process by which money coming from one source is made to look as if it is coming from another source, or a process of making illegally obtained money to appear legal.

Money laundering is a term used to describe the process that disguises the source of money which comes from an illegal act (criminal) or a way to “wash” or clean the money free from its criminal origin.

According to the Bank Negara Malaysia, it is a process of converting cash or property derived from criminal activities to give it a legitimate appearance.

Section 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUA) illustrates the type of activities involving money laundering which inter alia referring to an act of person who is involved with the proceeds of any unlawful activity.

In the case of **PP v Ong Seh Sen (2010) 7 CLJ 233**, it is mentioned by Abang Iskandar bin Abang Hashim JC that “money laundering is indeed a relatively new form of commercial crime that had just been codified as criminal offence. It can be categorised as a form of white collar crime. Although apparently no physical violence would be normally associated with the penetration of this crime, nevertheless its impact, if left unchecked could lead to economic ruin to any country”.

2. Historical background

Money laundering came into rise in worldwide drug trafficking in the 1980s. As a result of such activities, prompted the law enforcers to focus on the money laundering process and the person involved in it in order to stop criminals receiving profits from their activities and to trace back the source of such proceeds. - (E.P Ellinger & Eva Lomnicka)

Other authors - it started thousands of years ago when merchants in China hid their wealth for fear that rulers would take the profits and assets they had accumulated through trade.

3. How it happens

The criminals convert the money into readily movable assets, moving cash outside the jurisdiction to invest it in a business and trading at inflated prices to expatriate funds - Sterling Seagrave.

In other words, money laundering is one of the ways used by the merchants in an attempt to evade taxation.

4. Offences + instrumentalities of an offence + punishment

The **offences** under **Section 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUA)** include any person who

(a) engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence;

(b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence;

(c) removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or

(d) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence,

are all considered as committing the offence of money laundering.

On **conviction**, the person shall be liable to imprisonment for a term not exceeding 15 years and shall also be liable to a fine of not less than 5 times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or 5 million ringgit, whichever is the higher.

5. Technique of money laundering

The techniques of money laundering include placement, layering, and integration.

Placement means the movement of the illicit fund from the original source and is placed or deposited into the financial system.

Layering means separating illicit proceeds from the source by creating a complex layer of transactions and may involve different entities and jurisdictions to avoid audit trail. The money is being moved around the banking system, multiple transfer and re-transfer, repeat invoicing of the same transaction, re-sale of assets originally purchased in cash by using the illicit funds.

Integration is the turning of criminally derived wealth into 'legitimate' funds. For example, resume control of the fund free from any link to their criminal activities. The money is then withdrawn from the account and the money is used to buy property or high value items, invoice manipulation to remit money abroad, engage in legal business by providing capital or loans.

6. Effect of money laundering

There are 4 effects of money laundering which are economic distortion, erosion of the financial sector, reduction in government revenue and socio-economic costs.

1. **Economic distortion** - Money laundering reduces tax revenue because activity taking place in the underground economy is undeclared. This has a negative impact on a country's economy as a whole and also gives illegal businesses an unfair competitive advantage over those operating legitimately.

When money laundering is the *raison d'être* of a business, generating profit is secondary, and products are often sold for less than the cost of production, which, again, puts legitimate businesses at a disadvantage.

Money laundering is also often a reason why productive businesses, bought for the sole purpose of cleaning money, become unproductive or 'sterile'. Efficiency in the real sector of the economy is therefore reduced.

2. **Erosion of the financial sector** - A country's financial sector and the soundness of financial institutions, such as banks, are highly affected by money laundering. The negative effects of money laundering are defined as reputational, operational, concentration, and legal risks, which are all interrelated.

For instance, the reputational risks of a financial institution will likely result in the loss of public trust in the institutions due to bad publicity.

Consequently, depositors, borrowers, customers, and investors cease their business relationships with financial institutions involved in fraudulent activities, whose reputation will be significantly hindered by money laundering, terrorist financing, and other criminal activities.

This perception will have a destroying effect on the financial institutions' reputation and integrity. Once reputation is ruined, stakeholders will lose trust and goodwill in these institutions. Severe cases of money laundering might cause bank failures and financial collapse.

3. **Reduction in government revenues** - Tax revenue is reduced due to money laundering.

The government finds it difficult to meet up the annual revenue that was meant to be generated from transactions taking place in the underground world of black economy. Money laundering is a global phenomenon that undermines the economic and political stability of states. As it becomes difficult for the government to generate income from the related transactions, which are frequent in the informal economy, it decreases tax revenues, which causes a serious negative impact on the economy.

4. **Socio-economic costs** - The fight against clandestine activity is expensive, and government funds are inevitably spent on implementing AML regulations, and other crime-fighting policies are diverted from other areas of public spending such as health or education, so we all lose out.

When criminals successfully clean 'dirty money', this leads to more drugs, crime, violence and terrorist acts in an ever-increasing circle of criminality that draws more and more people into its net. When such big money can be made through illegal activities, previously legitimate businesses, as well as public and government employees, might be persuaded to jump on the criminal bandwagon to get a share of the booty.

7. Cases

1. **Azmi Osman v PP & Another Appeal [2015] 9 CLJ 845**, the offence, as defined under **Section 3 of the AMLATFA** is aimed at any person who knowingly engages in proceeds of an unlawful activity.

Under **Section 4(1)(a) of the AMLATFA**, it is not necessary that he must first be convicted with the predicate serious offence from which the proceeds were derived. Although the monthly income of the accused was banked into his CIMB account, millions were credited into his Maybank accounts in a steady stream of transactions. The accused ought to have reason to believe that the amounts were illegal proceeds or that for the same reason, he was given ample notice on account of the numerous transactions involving his Maybank accounts and yet he had wilfully turned a blind eye as to their sources or origin.

Section 4A(1) of AMLATFPUA Act 2001 read together with Section 14(1)(a) mentions that no one is allowed to structure or direct or assist or participate in structuring any transaction in the domestic or foreign currency exceeding the amount specified by the competent authority. Anyone who contravenes Section 4A(1) shall commit an offence and on conviction shall be liable to a fine of not more than 5 times the amount or value of the transaction; or imprisonment for a term not exceeding 7 years or both

2. **PP v Ong Seh Sen (2010) 7 CLJ 233**, OSS had been charged for an offence under s. 4(1) of the AMLA 2001. OSS had forged 75 invoices belonging to a company owned by him (Otto Century Enterprise) as a cover up to account for the proceeds of an illegal betting on the English Premier League matches. The sum of RM1,372,359 was banked into the company's bank account with Maybank. Out of that sum, RM1 million was expended by the OSS. OSS pleaded guilty.

OSS was sentenced to two years imprisonment and also to pay a fine (penalty) of RM1 million or, in default, 12 months imprisonment.

3. **PP v Dato' Sri Mohd Najib Hj Abdul Razak (2020) 8 CLJ 319**, the former Prime Minister was charged under MACC Act 2009 (1 count), Penal Code (3 counts) and AMLATFPUA (3 counts). Amongst the issue was whether he had committed money laundering by receiving a total of RM42 million which was the proceeds of unlawful activity or activities into his personal bank accounts.

8. Terrorism financing

Terrorism financing generally refers to carrying out transactions involving funds that may or may not be owned by terrorists, or that have been, or are intended to be, used to assist the commission of terrorism.

According to the Bank Negara Malaysia, Anti Money Laundering / Countering Financing of Terrorism (AML/CFT), terrorism financing is the act of providing financial support, funded from either legitimate or illegitimate source, to terrorists or terrorist organisations to enable them to carry out terrorist acts or will benefit any terrorist or terrorist organisation.

Financing of terrorism includes :-

- providing or collecting property for carrying out an act of terrorism;
- providing services for terrorism purposes;
- arranging for retention or control of terrorist property; or
- dealing with terrorist property.

9. Measures adopted by banks & BNM

- The Basel Committee on Banking Supervision was established in 1974.
- Functions = as a forum for regular cooperation on banking supervisory matters
- Objective = to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide.
- The Basel Committee issued a "Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering by the Basel Committee on Banking Regulations and Supervisory Practices" in December 1988.
- BNM issued a circular BNM/GP9 in December 1993 as the 1st guidelines in Malaysia in detecting ML. The circular describes several basic principles such as customer identification, compliance with legislation and law enforcement bodies, record keeping and system and staff training.
- BNM/GP9 has been replaced by BNM's UPW/GP1[1]: Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Sectoral Guidelines 1 for Banking and Financial Institutions, effective from 15 November 2006.
- There are few guidelines issued by BNM covering various types of reporting institutions
inter alia:-

Ø AML/CFT – Banking and Deposit Taking Institution (Sector 1)

ØAML/CFT – Insurance and Takaful (sector 2)

- Pursuant to AMLATFPUA Act 2001, BNM set up a Financial Intelligence Unit (FIU) within the Financial Intelligence and Enforcement Department in Bank Negara Malaysia to manage and provide comprehensive analysis on the financial intelligence received relating to money laundering and terrorism financing.
- FIU works with more than twelve other agencies in Malaysia to identify and investigate suspicious transactions.